

HOUSE No. 3171

By Mr. Cabral of New Bedford, petition of Antonio F. D. Cabral and others for legislation to establish an office of public accountability and an open meeting board in the office of the Attorney General. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

PETITION OF:

Antonio F. D. Cabral
Lewis G. Evangelidis

Michael E. Festa
Douglas W. Petersen

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO THE OPEN MEETING LAW.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 11A½ of Chapter 30A, as appearing in the
2 2004 Official Edition of the General Laws, is hereby amended by
3 adding the following:—

4 Notwithstanding any general or special law to the contrary, the
5 Office of Public Accountability (“the Office”) is hereby created
6 within the office of the attorney general. The Office shall be gov-
7 erned by a board of advisers, known as the Open Meeting Law
8 Board (“the Board”). The Board shall consist of 4 persons to be
9 appointed by the governor, 1 of whom shall be the president of the
10 Massachusetts Municipal Association or a designee, 1 of whom shall
11 be the president of the Massachusetts District Attorneys Association
12 or a designee, and 1 of whom shall be the president of the Massa-
13 chusetts Newspaper Publishers Association or a designee; 1 person
14 to be appointed by the secretary of the Commonwealth; and 2 per-
15 sons to be appointed by the attorney general, 1 of whom shall be a
16 member of a public employee union and 1 of whom shall serve as
17 chair of the Board.

18 The terms of the members appointed shall be 3 years.

19 The Board shall review all complaints of violations of the open
20 meeting law. The Board shall refer complaints of violations of the

21 open meeting law against local governmental bodies to the appropriate district attorney within ten days of receiving the complaint.
22 The Board shall direct the attorney general to investigate any complaints of violations of the open meeting law by state agencies. The Board shall receive a status report of any investigation conducted by the office of the attorney general or the appropriate district attorney within ninety days of the date the complaint was referred.

28 The Board shall also create educational materials to be made available to local officials in order to foster awareness and compliance with the open meeting law.

31 The Board shall report annually to the clerks of the senate and house of representatives and the joint committee on state administration and regulatory oversight a list of all allegations investigated by the Board, including the name of the governing body investigated, the location of the governing body, the date of the violation, and the type of violation alleged.

1 SECTION 2. Section 23A of Chapter 39 is hereby amended by striking the definition of “deliberation” and inserting in its place the following definition of “deliberation”:—

4 “Deliberation”, an exchange between a quorum of members of a governmental body attempting to arrive at a decision on any public business within its jurisdiction.

7 And be further amended by striking the definition of “meeting” and inserting in its place the following:—

9 “Meeting”, any corporal convening, or any other real-time electronic convening including but not limited to video, telephone or web conferencing, and deliberation of a governmental body for which a quorum is required in order to make a decision at which any public business or public policy matter over which the governmental body has supervision, control, jurisdiction or advisory power is discussed or considered; but shall not include any on-site inspection of any project or program.

1 SECTION 3. Section 11A of Chapter 30A is hereby amended by striking the definition of “deliberation” and inserting in its place the following:—

4 “Deliberation”, an exchange between a quorum of members of a
5 governmental body attempting to arrive at a decision on any public
6 business within its jurisdiction.

7 And be further amended by striking the definition of “meeting”
8 and inserting in its place the following:—

9 “Meeting”, any corporal convening, or any other real-time elec-
10 tronic convening including but not limited to video, telephone or
11 web conferencing, and deliberation of a governmental body for
12 which a quorum is required in order to make a decision at which any
13 public business or public policy matter over which the governmental
14 body has supervision, control, jurisdiction or advisory power is dis-
15 cussed or considered; but shall not include any on-site inspection of
16 any project or program.

1 SECTION 4. Section 23B of Chapter 39 is hereby amended by
2 striking the following:—

3 “(8) To consider and interview applicants for employment by a
4 preliminary screening committee or a subcommittee appointed by a
5 governmental body if an open meeting will have a detrimental effect
6 in obtaining qualified applicants; provided, however, that this clause
7 shall not apply to any meeting, including meetings of a preliminary
8 screening committee or a subcommittee appointed by a govern-
9 mental body, to consider and interview applicants who have passed a
10 prior preliminary screening.”

11 And inserting in its place the following:—

12 “(8) To consider and interview applicants for employment only
13 during the preliminary interviewing process. All interviews after the
14 first interview shall be open to the public.”

1 SECTION 5. Section 23B of Chapter 39 is hereby amended by
2 inserting after the word “attend” in the first paragraph, the
3 following: — “witness, or view, as applicable.”

1 SECTION 6. Section 11A½ of Chapter 30A is hereby amended
2 by inserting after the word “attend” in the first paragraph, the
3 following: — “witness, or view, as applicable.”

1 SECTION 7. Section 23B of Chapter 39 of the General Laws, as
2 appearing in the 2002 Official Edition, is hereby amended by

3 striking the 14th paragraph and inserting in its place the following
4 paragraph:—

5 The court may impose a civil fine against the governmental body
6 of up to \$1,000 and a civil fine of up to \$500 against each attending
7 member of the governmental body for each meeting held in violation
8 of this section. The fine shall not be imposed against any member of
9 the governmental body who is recorded in opposition to the govern-
10 ment act that is found in violation of the open meeting law. In addi-
11 tion, the court may assess reasonable attorney's fees and costs
12 against such governmental body where the court finds that:—

13 1.) after receiving notice of the filing of a complaint authorized by
14 this section, the governmental body opens to the public any meeting
15 or opens to the public the records of any such meeting, and

16 2.) the requested meeting or public record are described in the
17 complaint, and

18 3.) the requested meeting or public record had been requested in
19 writing by the complainant before filing the complaint, and

20 4.) before the complaint was filed, the governmental body or cus-
21 todian of the record had refused to open to the public the requested
22 meeting or to make the requested public record available to the com-
23 plainant.

1 SECTION 8. Section 11A½ of Chapter 30A, of the General Laws,
2 as appearing in the 2002 Official Edition, is hereby amended by
3 adding thereto as the last paragraph reading as follows:—

4 The court may impose a civil fine against the governmental body
5 of up to \$1,000 and a civil fine of up to \$500 against each attending
6 member of the governmental body for each meeting held in violation
7 of this section. The fine shall not be imposed against any member of
8 the governmental body who is recorded in opposition to the govern-
9 ment act that is found in violation of the open meeting law. In addi-
10 tion, the court may assess reasonable attorney's fees and costs
11 against such governmental body where the count finds that:—

12 1.) after receiving notice of the filing of a complaint authorized by
13 this section, the governmental body opens to the public any meeting
14 or opens to the public the records of any such meeting, and

15 2.) the requested meeting or public record are described in the
16 complaint, and

17 3.) the requested meeting or public record had been requested in
18 writing by the complainant before filing the complaint, and
19 4.) before the complaint was filed, the governmental body or cus-
20 todian of the record had refused to open to the public the requested
21 meeting or to make the requested public record available to the com-
22 plainant.

1 SECTION 9. Section 23B of Chapter 39 of the General Laws is
2 hereby amended in the sixth paragraph, by inserting after the words
3 “time and place of such meeting” the following words:—
4 “, and the agenda for such meeting or a list of items to be dis-
5 cussed, if such agenda or items have been determined by the time of
6 the posting”.

1 SECTION 10. Section 11A½ of Chapter 30A of the General Laws
2 is hereby amended in the sixth paragraph, by inserting after the
3 words “time and place of such meeting” the following words:—
4 “, and the agenda for such meeting or a list of items to be dis-
5 cussed, if such agenda or items have been determined by the time of
6 the posting”.

1 SECTION 11. Section 23B of Chapter 39 is hereby amended by
2 striking the following:—
3 “No quorum of a governmental body shall meet in private for the
4 purpose of deciding on or deliberating toward a decision on any
5 matter except as provided by this section.”
6 And inserting in its place:—
7 “No quorum of a governmental body shall meet, by any means,
8 in private nor communicate by electronic mail or other electronic
9 means for the purpose of deciding on or deliberating toward a deci-
10 sion on any matter except as provided by this section.”

1 SECTION 12. Section 11A½ of Chapter 30A is hereby amended
2 by striking the following:—
3 “No quorum of a governmental body shall meet in private for the
4 purpose of deciding on or deliberating toward a decision on any
5 matter except as provided by this section.” And inserting in its place:—
6 “No quorum of a governmental body shall meet, by any means,
7 in private nor communicate by electronic mail or other electronic

8 means for the purpose of deciding on or deliberating toward a deci-
9 sion on any matter except as provided by this section.”

1 SECTION 13. Section 23B of Chapter 39 is hereby amended by
2 striking the following:—

3 “A governmental body shall maintain accurate records of its
4 meetings, setting forth the date, time, place, members present or
5 absent and action taken at each meeting, including executive ses-
6 sions. The records of each meeting shall become a public record and
7 be available to the public; provided, however, that the records of any
8 executive session may remain secret as long as publication may
9 defeat the lawful purposes of the executive session, but no longer.
10 All votes taken in executive sessions shall be recorded roll call votes
11 and shall become a part of the record of said executive sessions. No
12 votes taken in open session shall be by secret ballot.”

13 And inserting in its place the following paragraph:—

14 “A governmental body shall maintain accurate records of its
15 meetings, setting forth the date, time, place, members present or
16 absent and action taken at each meeting, including executive ses-
17 sions. The records of each meeting shall become a public record and
18 be made available to the public and kept in a public building that is
19 accessible to members of the public during regular business hours;
20 provided, however, that the records of any executive session may
21 remain secret as long as publication may defeat the lawful purposes
22 of the executive session, but no longer. All votes taken in executive
23 sessions shall be recorded roll call votes and shall become a part of
24 the record of said executive sessions. No votes taken in open session
25 shall be by secret ballot.”